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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY:

IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHAEL FERGUSON **PLAINTIFF,** **Vs.** **WALMART** **AND DOES 1-10, INCLUSIVE** **DEFENDANTS.**	CV12-04434 PLA **DOCKET NO.:** **COMPLAINT FOR DAMAGES ARISING FROM DISABILITY DISCRIMINATION; RACE DISCRIMINATION AND RETALIATION** **JURY TRIAL DEMANDED**

FILE BY FAX

Plaintiff, Michael Ferguson, complains of Defendants as follows:

JURISDICTION AND VENUE

1. This action is brought to remedy discrimination on the basis of disability and retaliation, conditions and privileges of employment and to remedy violation of the Title I of the American Disability Act (A.D.A.) and Title VII of the Civil rights Act.

2. Injunctive and declaratory relief, damages and other appropriate legal and equitable relief are sought pursuant to 42 U.S.C. section 2000 (e)(f) and (g) and the Civil Rights Act of 1991.

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3. Plaintiff, Michael Ferguson, hereinafter referred to as plaintiff, a resident of Ventura County in the State of California timely filed a race discrimination and disability discrimination charge against defendant Walmart hereinafter referred to as "Walmart," form of business unknown and doing business in Ventura County, California with the California Department of Fair Employment and Housing ("DFEH") and with the Equal Employment Opportunity Commission ("EEOC") complaining of the acts of disability discrimination as alleged herein.

4. The Equal Employment Opportunity Commission, "EEOC" issued plaintiff a notice on August 11,2011 informing him of his right to sue defendants in Federal Court.

5. Plaintiff has complied fully with all prerequisites to jurisdiction in this Court under Title VII. Jurisdiction of this Court is proper under Section 706(f)(3) of Title VII, 42 U.S.C. Section 2000e-5(f)(3).

6. As the unlawful employment practice complained of herein occurred within the Central District of California, venue is proper in this District pursuant to Section 706(f)(3) of Title VII, 42 U.S.C. Section 2000e-5(f)(3).

PARTIES

7. At all relevant times herein mentioned, plaintiff Michael Ferguson was an employee of defendant Walmart until the wrongful termination of his employment by defendant on or about March 9,2011.

8. Upon information and belief, defendant Walmart at all times relevant herein conducted a substantial part of business in Ventura County, California.

FACTS COMMON TO ALL CAUSES OF ACTION

9. Plaintiff began working for defendant "Walmart" on or about February 2,208 until on or about March 9,2011. During the course of his employment, Plaintiff was subjected to racial discrimination,constant harrassment and retaliation for making complaints against his supervisors. Due to the harrassment, racial discrimination and retaliation, plaintiff sustained

stress and anxiety disorders for which he consulted his family physician on or about March 8,2011.

10. Thereafter, plaintiff returned to work on or about March 9,2011 and requested a Family Medical leave, pursuant to the Family Medical Leave Act "F.M.L.A" from March 9,2011 to March 28,2011. Instead of granting Plaintiff's request for his family leave, defendant suspended Plaintiff from his employment on the alleged ground of "Gross misconduct-Integritiy," when in fact,defendant suspended Plaintiff in retaliation for complaining about racial discrimination and for reporting a job related injury.

11. Plaintiff thereafter treated with defendant's workers compensation doctor who later released plaintiff to return to work on or about September 1,2011. After plaintiff reported to work, defendant refused to allow him to work stating that Plaintiff will not work for them because he had filed a lawsuit or a discrimination charge against them with the E.E.O.C.; charge number 480-2011-02695 for racial discrimination, disability discrimination and retaliation for filing a workers compensation claim.

12. As a proximate result of defendant's retaliation against Plaintiff, plaintiff filed another charge with the E.EO.C; charge number 480-2011-7327. On or about February 22,2012 the E.E.O.C issued Plaintiff his Right to Sue letter.

FIRST CAUSE OF ACTION

DISABILITY DISCRIMINATION

13. Plaintiff incorporates the allegations of paragraph 1 through 12 inclusive, as though fully set forth herein. This action is pled against defendant Walmart ,Inc.

14. By the acts herein alleged in these allegations, defendants have intentionally, fraudulently and knowingly violated the American Disability Act (A.D.A.) by discriminating against plaintiff in the terms, conditions and privileges of his employment on the basis of his disability as more fully set forth in paragraph 9 to 12, all in violation of the A.D.A..

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15. As a proximate result of defendant's discriminatory practices, plaintiff has suffered and will continued to suffer irreparable injury and monetary damages. Furthermore, defendant's acts have subjected plaintiff to pain and suffering, fraud, deceit and oppression in conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to general and punitive damages according to proof.

SECOND CAUSE OF ACTION

VIOLATION OF FAMILY MEDICAL LEAVE ACT (F.M.L.A.)

16. Plaintiff incorporates the allegations of paragraph 1 through 12 inclusive, as though fully set forth herein. This action is pled against defendant Walmart.

17. By the acts herein alleged in these allegations, defendants have intentionally, fraudulently and knowingly violated the Family Leave Act by discriminating against Plaintiff in the terms, conditions and privileges of his employment on the basis of her Family Leave Act as more fully set forth in paragraph 9 to 12.

18. As a proximate result of Defendant's discriminatory practices, plaintiff has suffered and will continue to suffer irreparable injury and monetary damages. Furthermore, defendant's acts have subjected plaintiff to pain and suffering, fraud, deceit and oppression in conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to general and punitive damages according to proof.

THIRD CAUSE OF ACTION

STATUTORY RACE DISCRIMINATION

19. Plaintiff incorporates paragraphs 1 through 12 and they are realleged and incorporated herein by reference. **This cause of action is pled against defendant Walmart.**

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20. Plaintiff was at all times material hereto an employee covered by **Section 706(g) of Title VII (42 U.S.C. 2000e–2)**, prohibiting discrimination in employment on the basis of race discrimination.

21. Defendant has discriminated against plaintiff based on his race in that during her employment with defendant he was subjected to race discrimination as more fully set forth in paragraphs 9 and 11.

22. Defendants were at all times hereto employers within the meaning of **Section 706(g) of Title VII (42 U.S.C. 2000e–2)**, and, as such, are barred from discrimination in employment decisions on the basis of race discrimination as set forth in **Section 706(g) of Title VII (42 U.S.C. 2000e–2)** and the Civil Rights Act of 1964.

23. Plaintiff has satisfied all of the procedural and administrative requirements set forth in **Section 706(g) of Title VII (42 U.S.C. 2000e–2)**, in particular:

a) Plaintiff filed a timely charge of discrimination with the Department of Fair Employment and Housing (DFEH) and Equal Employment Opportunity Commission (E.E.O.C.)

b) The "E.E.O.C" has issued a "right to sue" letter to the plaintiff;

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c) Plaintiff has timely filed the within complaint herein with the court within the required ninety days after receiving his "right to sue" letter, pursuant to **Section 706(g) of Title VII (42 U.S.C. 2000e–2)**

24. As a proximate result of defendant's discrimination against plaintiff, plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to his damages in an amount according to proof.

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25. Defendant committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring plaintiff from an improper and evil motive amounting to malice, and in conscious disregard of plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from defendant in an amount according to proof.

26. As a result of defendant's discrimination acts as alleged herein, plaintiff has no plan, adequate or complete remedy at law, defendant continues to engage in said alleged wrongful practice. Therefore, plaintiff requests that he be made whole and afforded all benefits attendant thereto that would have been afforded plaintiff but for said discrimination.

27. As a result of defendant's discriminatory acts as alleged herein, plaintiff is entitled to reasonable attorney's fees and costs of said suit as provided by **Section 706(g) of Title VII (42 U.S.C. 2000e–2).**

FOURTH CAUSE OF ACTION

RETALIATION

28. Plaintiff incorporates the allegations of paragraphs 1 through 12 inclusive, as though fully set forth herein. This cause of action is pled against defendant Walmart.

29. By the acts herein alleged in these allegations, defendants have intentionally, fraudulently and knowingly discriminated against plaintiff in the terms, conditions and privileges of her employment by retaliating against him by terminating his employment for filing a workers compensation claim, race discrimination and disability discrimination charges against defendant. "E.E.O.C" charge number-480-2011-02695.

30. As a proximate result of defendant's intentional and fraudulent discriminatory practices against plaintiff, plaintiff has suffered and will continue to suffer irreparable injury and monetary damages. Furthermore, defendant's acts have subjected plaintiff to pain and suffering, fraud, deceit and oppression in conscious disregard of plaintiff's rights. Plaintiff is therefore entitled to general and punitive damages according to proof.

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PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays that this Court enter a judgment as follows:

1. Declaring that the acts and practices complained of herein are in violation of The Family Medical Leave Act (F.M.L.A.) The American Disability Act (A.D.A.) and Title VII of the Civil Rights Act.
2. Enjoining and permanently restraining these violations of the F.M.L.A,A.D.A. and Title VII of the Civil Rights Act.
3. Directing Defendants to place plaintiff in the position he would have occupied but for defendant's discriminatory and retaliatory treatment, including but not limited to wage, pension and other lost benefits;
4. Awarding plaintiff the costs of this action together with reasonable attorney's fees, as provided by section 706(k) of Title VII, 42 U.S.C. section 2000e-6(k);
5. Directing defendants to pay plaintiff compensatory damages in the amount of, to be determined at trial.
6. Directing defendants to pay plaintiff for his general damages for pain and suffering according to proof;
7. Directing defendants to pay plaintiff punitive damages according to proof; and
8. Granting such other and further relief as this Court deems necessary and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a Jury Trial on all issues in this matter.

Dated: May 2, 2012

Respectfully submitted,

By ____________

Ed K. Bassey
Attorney for Plaintiff
Michael Ferguson